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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/609,174	06/27/2003	Marissa A. K. Schultz	J-3819	7786

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EXAMINER

STERLING, AMY JO

ART UNIT PAPER NUMBER

3632

DATE MAILED: 01/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/609,174

Applicant(s)

SCHULTZ, MARISSA A. K.

Examiner

Amy J. Sterling

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 November 2004.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
4a) Of the above claim(s) 19 and 40 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-18, 20-39 and 41 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 11/15/04.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

This is the **Final Office Action** for application number 10/609,174 Holding Device for Thermoplastic Lids, filed on 6/27/03. Claims 1-41 are pending. Claims 19 and 40 have been withdrawn as being drawn to a non-elected species. This **Final Office Action** is in response to applicant's reply dated 11/15/04. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action.

Information Disclosure Statement

The information disclosure statement (IDS) submitted on 9/20/04 and 11/15/04 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

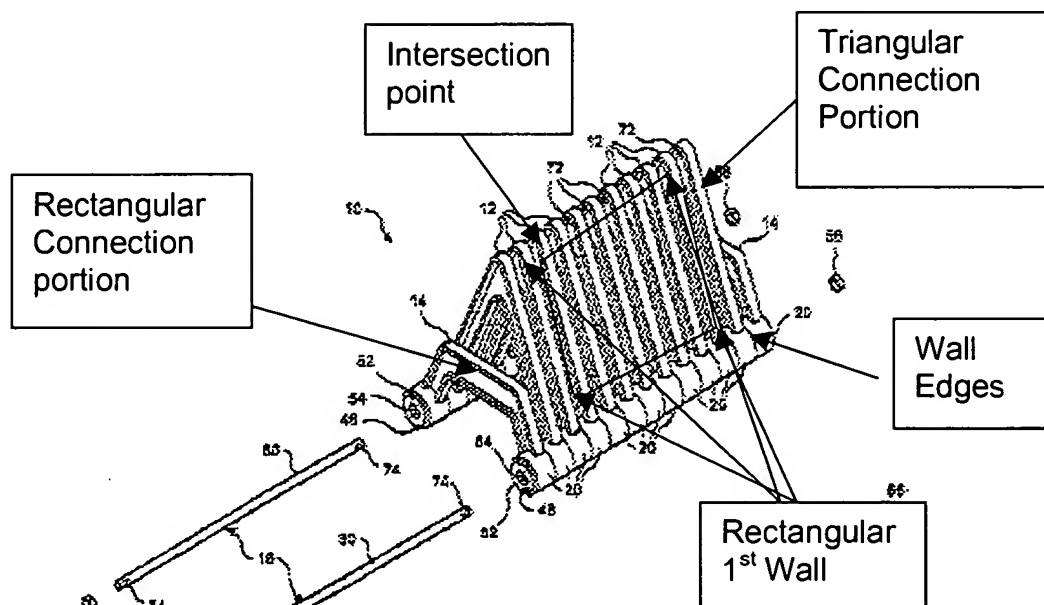
A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-18, 20-27 are rejected under 35 U.S.C. 102(b) as being anticipated by United States Patent No. 6170675 to Follman et al.

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The patent to Follman et al. discloses a plastic (See Col. 3, line 8-11 for material selection) holding device (10) with a first planar wall (24) which has a polygonal or rectangular shape including a first polygonal step-shaped cutout portion (72) (the cutouts are step shaped in that each one is like spaced apart like steps) providing a passage therethrough, and a step portion (70) extending from the front sides of the walls for holding object thereon and a second planar wall (28) with a second cutout portion (72) providing a passage therethrough, intersecting the first wall at an angle less than 180 degrees or 90 degrees, a first and second polygonal or rectangular or triangular connection portion (See Drawing Below for explanation), extending perpendicularly from and connecting the first and second edge portions of the first and second walls through the angle and a ridge (16) extending perpendicular from the rear side the walls.



Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

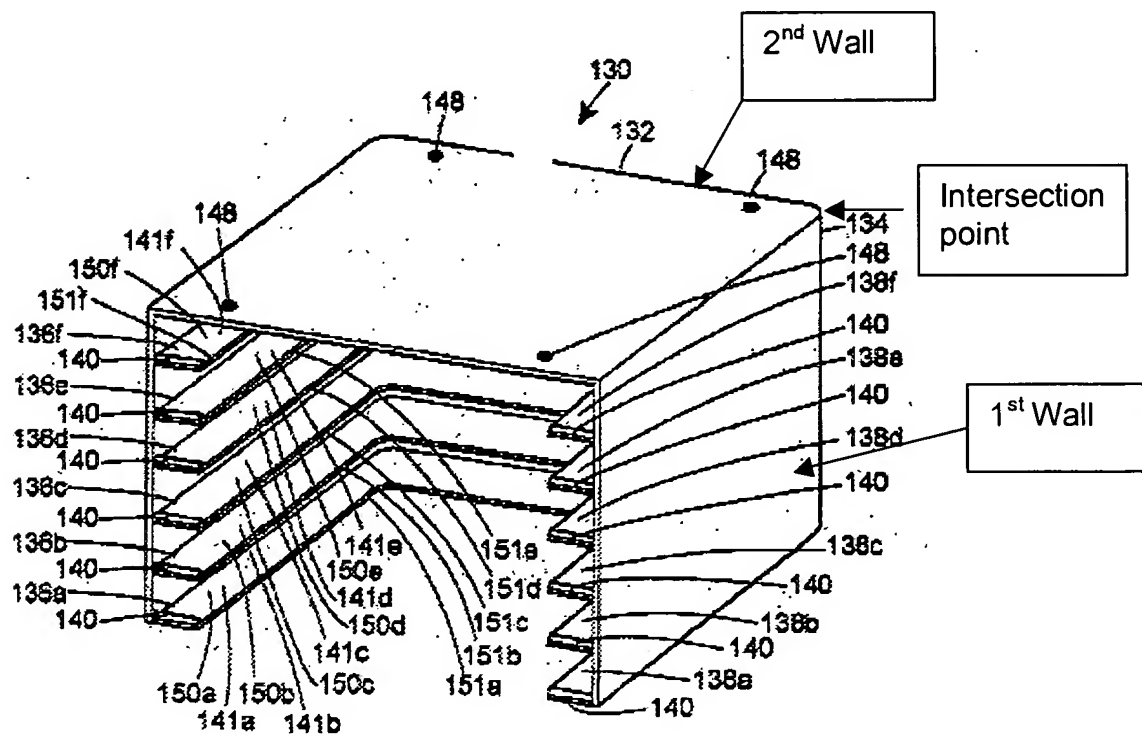
Claims 28-39 and 41 rejected under 35 U.S.C. 103(a) as being unpatentable over United States Patent No. 6170675 to Follman et al. and in view of United States Patent Publication No. 2004/0140274 to Turvey et al.

Follman et al. shows the basic inventive concept as taught above, including that the cutout portions have a polygonal shape and are step shaped as taught above. Follman et al. does not teach wherein a polygonal or rectangle or circular shaped thermoplastic lid is disposed between the cutout portions of the walls and held therein on the step portions and where the holding device includes a connecting portion extending perpendicularly from and connecting the first and second walls through a 90 degree angle.

Turvey et al. teaches a holding device for stacking thermoplastic container lids including a first and second intersecting planar walls (See Fig. Below, 134, See Fig. 18) wherein each of the walls has a step shaped or polygonal cutout portion (138a-138f) (Step shaped refers to the platforms of the cutouts which represent steps (140), and at least one thermoplastic lid (142, See Fig. 19) which can be circular (See Fig. 4) or polygonal/rectangular (See Fig. 19) disposed between the cutout portions of the walls

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and held in place therein on the step portions and a connecting portion (132) extending perpendicularly from and connecting first and second walls through an angle, and mounting holes (148) for use with a fastener. The device taught by Follman et al. could be used with any shape device including a thermoplastic lid, if so desired. Therefore it would have been obvious from the teachings of Turvey to have any shape lid, used in conjunction with the device of Follman et al. as a mere design or use choice.



Response to Arguments

The applicant has argued that the walls as described by Follman et al. do not show planar walls. This is unpersuasive in that the area that consists of a wall, as taught above, are planar with respect to each other.

The arguments as applied to claims 28-39 and 41 are moot in view of the new ground of rejection above.

Conclusion

THIS ACTION IS MADE FINAL. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action. Any inquiry concerning this communication should be directed to Amy J. Sterling at telephone number 703-308-3271. The examiner can normally be reached (M-F 8 a.m.-5:00 p.m.). If attempts to

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reach the examiner are unsuccessful, the examiner's supervisor, Leslie Braun can be reached at 703-308-2156. The fax machine number for the Technology center is 703-872-9306 (formal amendments) or 703-308-3519 (informal amendments/communications). Any inquiry of a general nature or relating to the status of this application should be directed to the Technology Center receptionist at 703-308-2168.


AJS

Amy J. Sterling
1/8/05



RAMON O. RAMIREZ
PRIMARY EXAMINER